

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-7147

UNITED STATES COURT OF APPEALS
FOR THE SECOND JUDICIAL CIRCUIT

DOCKET NUMBER 76-7147

BISWANATH HALDER

PLAINTIFF - APPELLANT.

V

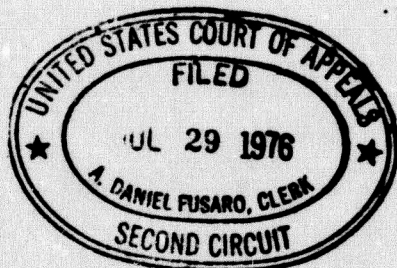
INFORMATICS, INCORPORATED,

EQUIMATICS, INCORPORATED,

DEFENDANTS - APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

REPLY BRIEF FOR PLAINTIFF-APPELLANT



BISWANATH HALDER

APPELLANT PRO SE

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ARGUMENT

THE APPELLEES' CONTENTION THAT "THERE IS ABSOLUTELY NO MERIT TO THIS ACTION", APPELLEE'S BRIEF, PAGE 20, BECAUSE THE APPELLANT IS NOT FAMILIAR WITH EACH AND EVERY ASPECT OF COMPUTER SOFTWARE, IS NOT STRICTLY CORRECT.

TITLE VII DOES NOT REQUIRE A MINORITY APPLICANT TO BE EXPERIENCED WITH EACH AND EVERY ASPECT OF THE EMPLOYER'S BUSINESS. ALL THAT IS REQUIRED THAT THE LESS QUALIFIED BE NOT PREFERRED OVER THE BETTER QUALIFIED IRRESPECTIVE OF COLOR, OR RELIGION, OR NATIONALITY. GRIGGS v. DUKE POWER COMPANY, 1971, 401 U.S. 420, 436, 91 S.Ct. 829, 856.

INFORMATICS IS A LARGE SOFTWARE CONSULTING FIRM, EMPLOYING APPROXIMATELY SIX HUNDRED SOFTWARE PROFESSIONALS, AND

THE FIRM IS ENGAGED ALMOST WITH EACH AND EVERY ASPECT OF COMPUTER SOFTWARE. APPELLANT'S BRIEF, EXHIBITS E THROUGH M.

THE TIME THE APPELLANT CAME TO THE UNITED STATES, HE HAD A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING, AND TWO YEARS' EXPERIENCE IN WRITING DIAGNOSTIC PROGRAMS — PROGRAMS TO DIAGNOSE COMPUTER MALFUNCTIONING — FOR TWO OF THE FIVE LARGEST COMPUTER MANUFACTURERS OF THE WORLD. CONSEQUENTLY, HE WAS AT THAT TIME, FAMILIAR ONLY WITH CERTAIN ASPECTS OF COMPUTER SOFTWARE, AND NATURALLY WAS NOT EXPECTED TO HAVE KNOWN THE APPELLEES' BUSINESS IN FULL DETAIL. HAD HE HAD A JOB FOR ALL THESE YEARS, AND BUT FOR THE ILLEGAL EMPLOYMENT POLICIES, PRACTICES OF THE COMPUTER INDUSTRY, HE WOULD HAVE GAINED EXPERIENCE IN SOME MORE ASPECTS OF COMPUTER SCIENCE.

THEREFORE, THE APPELLANT'S FAILURE TO HAVE COMPLETELY MASTERED THE ENTIRE COMPUTER SCIENCE FIELD CAN IN NO WAY BE CONSIDERED AS A BAR TO AN EMPLOYMENT WITH THE APPELLEES.

THE APPELLEES FURTHER CONTEND THAT THE ACTION IS TIME BARRED BECAUSE THE APPELLANT DID NOT COMMENCE THE ACTION WITHIN NINETY DAYS OF THE ISSUANCE OF THE NOTICE OF RIGHT-TO-SUE BY THE EEOC ON FEBRUARY 25, 1975. APPELLEES BRIEF, PAGE 19. THE APPELLANT MAY RESPECTFULLY POINT OUT THAT THE SUIT HAS TO BE BROUGHT BY THE APPELLANT WITHIN NINETY DAYS OF THE RECEIPT OF THE NOTICE OF RIGHT-TO-SUE, AND NOT WITHIN NINETY DAYS OF THE ISSUANCE OF SUCH NOTICE. PLUNKETT V. ROADWAY EXPRESS, INC. 506 F.2d 617, CA 10 1976; FRANKS V. BOHMAN TRANSPORTATION COMPANY, 495 F.2d 398, CA 5 1976.

THE APPELLANT RECEIVED THE NOTICE OF
RIGHT-TO-SUE INFORMATICS ON MARCH 25, 1975,
AND COMMENCED INSTANT ACTION ON JUNE 11,
1975, WELL WITHIN THE NINETY DAY PERIOD
OF INSTITUTING ACTION, AS REQUIRED BY
SECTION 706(b)(1) OF TITLE VII OF THE CIVIL
RIGHTS ACT OF 1964, AS AMENDED, 42 USCA
20002-5(b)(1).

POINT I THE TRIAL COURT IMPROPERLY
LIMITED THE SCOPE OF INTERROGATORIES

IN HIS INTERROGATORIES, THE APPELLANT PRIMARILY ASKED FOR THE QUALIFICATIONS OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEES SINCE 1969. THE APPELLEES OBJECTED TO ON GROUNDS OF BURDENSOMENESS AND OPPRESSIVENESS :

"OBJECTED TO IN THAT THE COMPILATION OF THIS INFORMATION IS A BURDENSOME AND OPPRESSIVE TASK FOR DEFENDANT INFORMATICS TO DO, IS NOT LIKELY TO LEAD TO RELEVANT MATERIAL OR ADMISSIBLE EVIDENCE, AND ADDITIONALLY CONSTITUTES AN INVASION OF PRIVACY OF DEFENDANT INFORMATICS' EMPLOYEES. NOTWITHSTANDING THE FOREGOING OBJECTIONS, IF PLAINTIFF WISHES TO INSPECT THE TERMINATED EMPLOYEE AND EMPLOYEE FILES LOCATED IN RIVER EDGE, NEW JERSEY.

THOSE RECORDS WILL BE MADE AVAILABLE TO HIM PROVIDED THAT ALL IDENTIFYING DATA CONTAINED IN THESE RECORDS BE DELETED FROM ANY INFORMATION SHOWN TO PLAINTIFF." DEFENDANTS' ANSWERS & OBJECTIONS TO INTERROGATORY 5, DATED AUGUST 26, 1975.

THAT PARTIAL DISCOVERY OFFER MADE BY THE APPELLEES TO THE APPELLANT IS NO OFFER AT ALL, SINCE THE APPELLANT WAS ALLOWED ONLY TO INSPECT CERTAIN FILES LOCATED AT ONE OF THEIR BUSINESS LOCATIONS AND NOT TO MAKE COPIES OF ANY INFORMATION FROM THOSE FILES.

FURTHERMORE, THE APPELLEES RETAINED THE RIGHT TO SHOW THOSE FILES FOR THE APPELLANT'S INSPECTION ONLY UPON DELETION OF ALL THE IDENTIFYING DATA CONTAINED IN THOSE RECORDS. SO THAT THERE IS NO WAY FOR EITHER THE APPELLANT OR ANYBODY

ELSE TO MAKE OUT WHETHER THOSE FILES
BELONG TO EMPLOYEES OR FORMER EMPLOYEES
OF THE APPELLEES, OR THEY ARE FICTITIOUS.

THE APPELLANT IS NOT AWARE OF A
SINGLE INSTANCE WHERE A COURT HAS RULED
THAT, IF A PLAINTIFF IN A JOB-BIAS ACTION
USES IDENTIFYING DATA OF THE PRESENT
AND PAST EMPLOYEES OF A CORPORATE
DEFENDANT IN COURT PROCEEDINGS, CAN
CONSTITUTE AN INVASION OF PRIVACY OF
SUCH PERSONS

THE APPELLANT DEMANDS REVERSAL OF THE
INSTANT APPEAL, AND A FAIR TRIAL UPON FULL
AND COMPLETE DISCLOSURE OF THE QUALIFICATIONS
AND EXPERIENCES (INCLUDING ALL IDENTIFYING
DATA) OF ALL THE PROGRAMMERS AND ANALYSTS
HIRED BY THE APPELLEES OVER THE PAST
SEVEN YEARS.

POINT II THE TRIAL COURT IMPROPERLY
DISMISSED THE COMPLAINT

IN THE CASES CITED BY THE APPELLEES, WHERE THE APPELLATE COURTS HAVE AFFIRMED LOWER COURTS' DISMISSAL OF THE COMPLAINTS FOR LACK OF PROSECUTION, THE FACTS DO DEPICT "A DRAW-OUT HISTORY" OF "DELIBERATELY PROCEEDING IN DILATORY FASHION." LINK V WABASH RAILROAD COMPANY, 1962, 370 U.S. 626, 633. 82 S.Ct. 1386, 1390.

OTHERWISE, THE APPELLATE COURTS HAVE UNIFORMLY REVERSED THE TRIAL COURTS INDUSTRIAL BUILDING MATERIALS, INC V INTERCHEMICAL CORPORATION, 437 F.2d 1336, CA 9 1970; PETERSON V TERM TAXI, INC, 429 F.2d 888, CA 2 1970; MCCOMBS V PITTSBURGH-DES MOINES STEEL COMPANY, 426 F.2d 264, CA 10 1970; SYRACUSE BROADCASTING CORPORATION V WEDHOUSE, 271 F.2d 910, CA 2 1959;

PEARSON V CHAPMAN, 169 F.2D 909, CA 3 1948;
CARNEGIE NATIONAL BANK V CITY OF WOLF
POINT, 110 F.2D 569, CA 9 1940. BECAUSE
RULE 41(b) OF THE FEDERAL RULES OF CIVIL
PROCEDURE HAS DIRECTLY REVERSED EQUITY'S
TRADITIONAL DOCTRINE THAT A DISMISSAL
WITHOUT CONSIDERATION OF THE MERITS IS ALSO
WITHOUT PREJUDICE TO THE COMPLAINANT. SWAN
LAND & CATTLE COMPANY V FRANK, 1893, 148
U.S. 603, 612, 13 S.Ct. 691, 694.

IN THE INSTANT ACTION, THE APPELLANT
HAS BEEN VIGOROUSLY AND DILIGENTLY
PROSECUTING THE CASE THROUGHOUT. IN ORDER
TO DEFINE HIS CASE WITH FINESSE, THE
APPELLANT PROPOUNDED INTERROGATORIES TO
THE APPELLEES, WHICH HAD BEEN REFUSED
TO BE ANSWERED ON GROUNDS OF BURDEN-
SOMENESS AND OPPRESSIVENESS. HIS EFFORT TO
COMPEL THE APPELLEES TO ANSWER THE
INTERROGATORIES WAS FRUSTRATED, AND THE

COMPLAINT WAS DISMISSED FOR LACK OF PROSECUTION ONLY AFTER EIGHT MONTHS FROM THE COMMENCEMENT OF THE ACTION.

IMMEDIATELY AFTER THE APPELLANT MOVED TO THE COURT OF APPEALS AGAINST THE DENIAL OF A PRELIMINARY INJUNCTION AGAINST AVIS (DOCKET NUMBER 76-7039), THE TRIAL COURT FELT THE URGE OF DISMISSING THE APPELLANT'S CLAIM, AND SCHEDULED THE HALDER ACTIONS FOR DISMISSAL (ANY MAN WITH WISDOM WOULD COME TO THE SAME CONCLUSION IF HE LOOKS AT THE NEW YORK LAW JOURNAL OF 02-10-1976).

AT THE TRIAL FOR DISMISSAL, SPERRY RAND, QUOTRON, AND INFORMATICS WERE READY TO PROCEED; RCA, GENERAL TELEPHONE, AND ITT WERE NOT. THE APPELLANT CROSS-MOVED FOR SUMMARY JUDGMENT AGAINST THE LATTER THREE. THOSE THREE FILES ARE BEAUTIFUL, THEY DO NOT WANT THE COURT OF APPEALS TO SEE THEM NOW (THE COURT OF APPEALS

HAS ALREADY SEEN ONE BEAUTIFUL FILE —
AVIS, 74 CIVIL 1552, ED OF NY).

THE DISMISSAL OF THE COMPLAINT, AS IS
ABUNDANTLY CLEAR, WAS "CONTRARY TO THE FIRST
PRINCIPLES OF THE SOCIAL COMPACT, AND OF
THE RIGHT ADMINISTRATION OF JUSTICE." McVEIGH
V UNITED STATES, 1871, 78 U.S. (11 WALL) 259, 267.
"IT WAS, IN FACT, A MERE ARBITRARY EDICT,
CLOTHED IN THE FORM OF A JUDICIAL SENTENCE"
WINDSOR V McVEIGH, 1876, 93 U.S. (23 WALL) 276, 278.

THE JUDGE SHOULD EVER BE MINDFUL THAT
THE "COURTS EXIST TO SERVE THE PARTIES, AND
NOT TO SERVE THEMSELVES, OR TO PRESENT A
RECORD WITH RESPECT TO DISPATCH OF BUSINESS."
ALCHANCE INDUSTRIES, INC V FLENE'S, 291 F.2D
142, 146, 2A 1 1961 "A COURT HAS THE RESPONSIBI-
LITY TO DO JUSTICE BETWEEN MAN AND MAN; AND
GENERAL PRINCIPLES CANNOT JUSTIFY DENIAL OF A
PARTY'S FAIR DAY IN COURT EXCEPT UPON A SERIOUS
SHOWING OF WILLFUL DEFAULT." GILL V STOLOW, 240 F.2D
669, 670, 2A 2 1957.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD,
IN ITS ENTIRETY, BE REVERSED.

RESPECTFULLY SUBMITTED,

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